

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

FILED 10/30/2019
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FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20190002-EG

ENERGY CONSERVATION COST
RECOVERY CLAUSE.

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS
PARTICIPATING: COMMISSIONER GARY F. CLARK
PREHEARING OFFICER

DATE: Tuesday, October 22, 2019

TIME: Commenced: 9:42 a.m.
Concluded: 10:18 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
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1 APPEARANCES:

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5 LAURA A. WYNN and JAMES W. BREW, ESQUIRES,
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10 J.R. KELLY, PUBLIC COUNSEL; CHARLES REHWINKEL,
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17 MARGO DuVAL and GABRIELLA PASSIDOMO, ESQUIRES,
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20 the Florida Public Service Commission Staff.

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25 Service Commission.

1 P R O C E E D I N G S

2 COMMISSIONER CLARK: Let's move to the 02
3 docket.

4 All right. Preliminary matters, Ms. DuVal.

5 MS. DUVAL: Good morning, sir. There are no
6 preliminary matters other than to note that if
7 stipulations can be reached in the next few days
8 the draft prehearing order will be modified to
9 reflect those agreements. And if those agreements
10 are reached, we will circulate and amend a draft
11 prehearing order before it is issued.

12 COMMISSIONER CLARK: Great.

13 Any of the parties have any preliminary
14 matters?

15 Okay. We will go through the prehearing
16 order.

17 Case background.

18 Conduct of proceedings.

19 Jurisdiction.

20 Procedure for handling confidential
21 information.

22 Prefiled testimony, Ms. DuVal.

23 MS. DUVAL: Yes, sir. In its prehearing
24 statement, FIPUG objects to a witness being
25 considered an expert witness unless the witness

1 affirmatively states the subject matter areas in
2 which he or she claims expertise.

3 Section VI A(8) of the order establishing
4 procedure requires that a party shall identify each
5 witness the party wishes to voir dire, as well as
6 state with specificity the portions of the witness'
7 prefiled testimony by page and line number and/or
8 exhibits by page and line number to which it
9 objects. If the party fails to identify the
10 portions of the prefiled testimony or exhibits to
11 which it objects, the party is not permitted to
12 conduct voir dire at the hearing absent a showing
13 of good cause. The good cause exemption does not
14 apply to the identification of a witness. If a
15 party does not identify the witness it wishes to
16 voir dire, it waives its right to voir dire.

17 Further, the Florida Supreme Court addressed
18 this issue in a recent opinion. Specifically, the
19 Court held that a party's failure to identify a
20 witness it wishes to voir dire in compliance with
21 the Commission's order establishing procedure
22 results in a waiver of that parity's right to voir
23 dire that witness regarding his or her expertise
24 and to challenge that expertise on appeal.

25 In its prehearing statement, FIPUG has not

1 identified the witnesses that it wishes to voir
2 dire, therefore, it appears to have waived the
3 right to do so since it has not complied with the
4 OEP, and at this time staff requests that a ruling
5 to that effect be made.

6 COMMISSIONER CLARK: Mr. Moyle.

7 MR. MOYLE: We've discussed this issue before,
8 not today, so I can't just say ditto, see above,
9 but I think everything that staff has said has been
10 said before. We just have a longstanding objection
11 to witnesses being tendered with no indication that
12 they are an expert in electrical engineering or an
13 expert in transmission design. We think that's the
14 better way to do it. That's how they do it at
15 DOAH, and it's a better practice.

16 So we will just stand by that, but understand
17 where we are, and I am not even sure there will be
18 witnesses called in this case. It may get worked
19 out.

20 COMMISSIONER CLARK: Very good. Thank you
21 very much.

22 All right. Let's move to Section VI, order of
23 witnesses.

24 MS. DUVAL: If an agreement can be reached to
25 excuse any witnesses, staff will confirm with each

1 Commissioner that the witnesses can be excused. If
2 no Commissioner has any questions of those
3 witnesses, they may be excused from the hearing and
4 his or her testimony and exhibits may be entered
5 into the record as though read at the hearing.

6 COMMISSIONER CLARK: Okay. Basic positions,
7 any changes?

8 Issues and positions.

9 MS. DUVAL: As in the other dockets, the order
10 establishing procedure requires that a party take a
11 position at the prehearing conference unless good
12 cause is shown as to why that party cannot take a
13 position at this time.

14 Accordingly, if a party's position in the
15 draft prehearing order is currently no position at
16 this time, that party must change its position or
17 show good cause why it cannot take a position.
18 Otherwise, the prehearing order will reflect no
19 position for that party for that issue.

20 Staff will also suggest that the parties who
21 have not yet taken a position, or wish to change
22 their position, be allowed to submit their position
23 in writing no later than close of business
24 tomorrow, October 23rd.

25 COMMISSIONER CLARK: Any changes? Yes, ma'am.

1 MS. WYNN: Yes, Commissioner. PCS, for Issues
2 1 through 7 has -- it is our position agree with
3 OPC, and OPC has listed their position as no
4 position, so we would change our position to no
5 position.

6 COMMISSIONER CLARK: Okay. Anyone else?

7 Okay. We will move into the exhibit list.

8 MS. DUVAL: Staff.

9 MR. REHWINKEL: Commissioner, I apologize.

10 COMMISSIONER CLARK: Mr. Rehwinkel.

11 MR. REHWINKEL: Where we are a no position at
12 this time, our position will change to no position.

13 COMMISSIONER CLARK: Okay. Excellent.

14 All right. Now move into exhibit list.

15 MS. DUVAL: Staff has prepared a comprehensive
16 exhibit list, which includes all prefiled exhibits
17 and also includes those exhibits staff wishes to
18 include into the record. We have circulated this
19 list to the parties and will do so again prior to
20 the hearing to determine if there are objections to
21 the list or any of staff's exhibits being entered
22 into the record.

23 COMMISSIONER CLARK: All right. Proposed
24 stipulations.

25 MS. DUVAL: We have no proposed stipulations

1 at this time, but staff is hopeful that
2 stipulations can be reached and we will continue
3 working towards that end.

4 MR. REHWINKEL: Commissioner --

5 COMMISSIONER CLARK: Mr. Rehwinkel.

6 MR. REHWINKEL: I am trying to keep up with
7 the numbers here, and we are now on 02, which deals
8 with investment. And Issue 11, there was an email
9 circulated late yesterday by Mr. Murphy in the 07
10 docket about asking that Issue 11 would be deferred
11 and a workshop would be held. I don't know if
12 that's the case with -- well, the corresponding
13 issue in 07, I don't know if that's the case in
14 Issue 11 -- for Issue 11 in this docket, but after
15 staff addresses that, I would like to also -- I
16 would like to address the Commission but giving
17 them the first chance at it.

18 COMMISSIONER CLARK: Ms. DuVal.

19 MS. DUVAL: I am not familiar with the issues
20 in the 07 docket, however, it's my understanding
21 that what Mr. Rehwinkel is referring to is perhaps
22 a separate issue from a joint docket.

23 COMMISSIONER CLARK: He is referring to the 02
24 docket right?

25 MR. REHWINKEL: I am in the 02 docket but I

1 thought the --

2 COMMISSIONER CLARK: Issue 11 --

3 MS. DUVAL: The joint motion is, yes, Issue 11
4 in the 02 docket. However, I believe Mr. Rehwinkel
5 was referring to an email from Mr. Murphy on staff,
6 but I am not privy to that, but my understanding is
7 that that was --

8 COMMISSIONER CLARK: You are implying the
9 email was referring to the 07 docket?

10 MS. DUVAL: And also referring to a separate
11 issue.

12 MR. REHWINKEL: Let me see if I have the
13 issue. This issue is the same.

14 MR. MURPHY: Commissioner, with your
15 permission, I believe that I was in error. We were
16 trying to stipulate our whole case. We are not
17 able to stipulate that issue, and I believe that
18 that is going to be taken up as a -- with -- I
19 believe that the intent is that that be taken up as
20 a motion separately at the hearing for the full
21 panel. It's an important matter. We were hopeful
22 that we could get a stipulation of it, but we were
23 in error.

24 COMMISSIONER CLARK: In the 07 docket?

25 MR. MURPHY: In the 07, but it is the

1 identical language. He is correct.

2 MR. REHWINKEL: Okay. In that -- in that
3 case, now is my time to make this, and I apologize
4 for your root canal situation, because I am not
5 going to make it worse.

6 COMMISSIONER CLARK: I am fine.

7 MR. REHWINKEL: Commissioner, this is an issue
8 that has arisen because some of the utilities
9 sought a private letter ruling from the IRS dealing
10 with the normalization aspects of matching the
11 capital structure for projections. And the IRS has
12 said that if they are going to use a projected --
13 I'm probably going to mess this up, but they said
14 that they needed to match a projected capital
15 structure with the recovery in order to avoid a
16 normalization violation. And that's a gross
17 generalization.

18 We had initially said we would take no
19 position on this issue, but the earnings
20 surveillance reports for the utilities came in, and
21 we have noticed that there has been a trend of
22 increased equity ratios that are above what we
23 think is the correct or the limit on equity ratios
24 for rate-making purposes.

25 Florida Power & Light's litigated to a 59.6

1 percent equity ratio in the last two rate cases.
2 Their equity ratio in their most recent
3 surveillance report is 61.1, which is out of
4 bounds, but that's our -- that's a subjective
5 statement on my part, but it is above what we
6 believe is the appropriate one for rate setting
7 purposes.

8 Gulf Power's stipulation calls for a limit on
9 there is at either 54 or 54.5 percent, and their --
10 they just filed a report that shows their equity
11 ratio at 58.32 percent.

12 So our issue is we have clauses that have
13 recently, in the fuel area, but for -- by statute
14 in 07 and 02 and the new whatever the number is
15 going to be in the undergrounding of the storm
16 protection plan clause, the Legislature has allowed
17 investments. The Commission has allowed
18 investments in fuel by fiat.

19 Those invest -- those investments are
20 essentially guaranteed return at the midpoint,
21 which is a great benefit to the utilities. If
22 utilities are then allowed to project capital
23 structures that have equity ratios that are
24 approaching these numbers, which we think are
25 highly excessive, we believe that's just a little

1 bit too much out of the trough, and we are
2 objecting to that in all of these investment
3 dockets.

4 So our position on this issue and any other
5 issue related to this will be no, but we also think
6 an issue ought to be added to the investment
7 related clause dockets as what is the appropriate
8 capital structure to use for investments allowed in
9 blank clause recovery. And I will submit that
10 issue by the end of the business today, but it will
11 generally be worded along that line.

12 I apologize for doing this at the last minute,
13 but we started looking at these surveillance
14 reports, they were -- they were just filed in the
15 last few days. We looked at them. I don't know if
16 the projected capital structures and equity ratios
17 are going to look like this, but they already are
18 top heavy in our view, and so we are going to raise
19 an issue about this. And if it affects who has to
20 appear as a witness in these clause cases, so be
21 it. But we are starting to become alarmed by this,
22 and I --

23 So that's my statement, our position, and it
24 supports the fact that our position will be no.

25 COMMISSIONER CLARK: Okay. You will be

1 changing your position to no?

2 MR. REHWINKEL: Yes. And we will ask that an
3 issue be added.

4 COMMISSIONER CLARK: Okay.

5 MR. REHWINKEL: Thank you.

6 COMMISSIONER CLARK: All right. Ms. DuVal,
7 any questions?

8 MS. DUVAL: Lots -- no.

9 So, Mr. Rehwinkel, you plan to file language
10 by the end of the day today?

11 MR. REHWINKEL: Yes, we will -- it may be much
12 earlier than that. I just -- I need to go back and
13 email it to everybody in each of the investment
14 dockets.

15 MS. DUVAL: Okay. So -- so in each of the
16 dockets, OPC is okay with keeping the issue
17 regarding whether or not to approve the joint
18 motion, this would just be an additional issue?

19 MR. REHWINKEL: Well, what I told Mr. Murphy
20 in his email was that we had taken no position, but
21 we did not object to it being deferred and going to
22 a workshop. We would think that would be the
23 better course of action, but we are not here to
24 object to that issue being -- being a part of this
25 docket. We just think it -- the staff's suggestion

1 yesterday we thought was a good idea, but if -- we
2 are not here to pound the table and say, don't let
3 the issue in, but we want another issue that's
4 what's the appropriate capital structure?

5 MS. DUVAL: Right. So two separate issues?

6 MR. REHWINKEL: Yes.

7 MS. DUVAL: Okay.

8 MR. REHWINKEL: Yeah.

9 MS. DUVAL: So, Commissioner, I believe after
10 the proposed language is filed, then you will need
11 to make a ruling, then we will issue a --

12 COMMISSIONER CLARK: Mary Anne, you have a
13 procedural issue?

14 MS. HELTON: I understand that, you know,
15 this -- Mr. Rehwinkel has raised this for the first
16 time, so we might want to hear -- you might want to
17 hear from the other parties with respect to whether
18 they have any thoughts on Mr. Rehwinkel's proposal
19 at this time.

20 MS. MONCADA: Thank you.

21 FPL also thinks it is a fine idea to do as
22 staff has suggested, which is to defer this issue
23 and to hold a workshop on it. FPL is okay with
24 that, and we think that if that were to occur, that
25 Mr. Rehwinkel's sub-issue could be taken up at the

1 workshop and discussed at that time also.

2 And also for FPL, I would note that I don't
3 know that one of the clause witnesses would be able
4 to address the new issue raised by Mr. Rehwinkel,
5 so that might be, in itself, a reason to not
6 include the issue. I don't know yet, though.

7 Thank you.

8 COMMISSIONER CLARK: Okay.

9 MR. REHWINKEL: Commissioner, before --

10 COMMISSIONER CLARK: Mr. Rehwinkel.

11 MR. REHWINKEL: I can agree with the
12 proposition that if this was deferred, the capital
13 structure issue would go to the workshop.

14 COMMISSIONER CLARK: Okay. Let's get the rest
15 of the opinions.

16 MR. BERNIER: I think we would agree with what
17 Ms. Moncada just said for FPL, and I would agree
18 that I don't know that we have a identified witness
19 who could speak to this proposed issue in this
20 docket, but something we would look into. But we
21 wouldn't have any problem with the original idea of
22 deferring the issue into a workshop, but thank you.

23 MR. BADDERS: Commissioner Clark, on behalf of
24 Gulf, the same as Duke and FPL, we are fine with
25 deferring this, and just thinking through my

1 witnesses in this docket, I don't have a witness at
2 this point. If the Commission wants to hear this,
3 we would accommodate that.

4 COMMISSIONER CLARK: Okay.

5 MR. BEASLEY: And for Tampa Electric,
6 Commissioner, we don't believe we have a witness
7 who could address the new issue raised by Office of
8 Public Counsel, but we would have to look into that
9 as well.

10 COMMISSIONER CLARK: Jon.

11 MR. MOYLE: We didn't know that this issue was
12 going to be raised, but it seems -- it seems to me
13 that to the extent that there is an equity ratio
14 that is outside the bounds of what the Commission
15 has authorized, it's probably not the first time
16 that's ever happened, and there is probably, you
17 know, the Commission, in its jurisdiction and
18 oversight, would take appropriate action regardless
19 of Mr. Rehwinkel raising, you know, a flag on it or
20 not.

21 I just would be surprised if this was the
22 first time, you know, this happened, and, you know,
23 workshops and that kind of stuff, I would suspect
24 Mr. Rehwinkel's evidence would merely be, here's
25 the prior order that said that equity ratio can't

1 exceed X, and now it's over X, and it's Y and
2 please, you know, ratchet it down.

3 So, you know, I am hypothesizing a little bit,
4 and I hope you still have some residual of your
5 Novocaine with that, but, you know, just an
6 observation and a comment with respect to the
7 issue.

8 COMMISSIONER CLARK: Thank you.

9 Ms. Keating.

10 MS. KEATING: Commissioner, for FPUC, the
11 witnesses that are currently listed for the docket
12 are not the witnesses that will be appropriate for
13 addressing this issue. We could certainly bring a
14 witness if the Commission desires to hear this, but
15 we are in agreement with the other utilities, that
16 it may be best to defer this to a workshop.

17 COMMISSIONER CLARK: Okay.

18 MR. MARSHALL: I don't think this really
19 impacts the issue that Sierra Club intervened on in
20 the 07 docket, but to the extent it does, no
21 position at this time.

22 COMMISSIONER CLARK: Okay.

23 MS. WYNN: Commissioner, PCS has no problem
24 with deferring the issue and holding a workshop.

25 COMMISSIONER CLARK: All right. So we are all

1 in agreement to defer. We are not withdrawing, we
2 are deferring Issue No. 11, and with that, Mr.
3 Rehwinkel, you will not be submitting a new issue,
4 is that correct?

5 MR. REHWINKEL: Yes, you are correct.

6 COMMISSIONER CLARK: Okay. We are all good
7 over here. Ms. DuVal?

8 MS. DUVAL: Could we just have a moment,
9 please?

10 CHAIRMAN GRAHAM: Sure. Let's take a
11 five-minute recess and let parties discuss it.

12 (Brief recess.)

13 COMMISSIONER CLARK: All right. Are we close
14 to a decision here, Ms. DuVal?

15 MS. DUVAL: I hope so.

16 So I think -- I think probably what I would
17 suggest is that I read the stipulation language
18 that we have come to on Issue 11, and then just
19 check with everybody and make sure that I have read
20 it accurately, and then we can move on from there.

21 COMMISSIONER CLARK: Sounds good. Read away.

22 MS. DUVAL: Okay. So for Issue No. 11 in the
23 02 docket the stipulation language that we have
24 is -- well, actually, I will read the issue just
25 for clarity sake.

1 Issue 11 is should the joint motion to modify
2 Order No. PSC-2012-0425-PAA-EU regarding weighted
3 average cost of capital methodology be approved?
4 And the stipulation language is, no. The
5 normalization provisions of the Internal Revenue
6 Code Treasury Regulation Section 1.167(1) through
7 (1)(h)(6) shall be applied to the weighted average
8 cost of capital in this docket subject to true-up.
9 The determination of the WACC to be applied in
10 future clause dockets shall be the subject of a
11 workshop to be held by Commission staff.

12 COMMISSIONER CLARK: Okay. Are all parties in
13 agreement with the stipulation as read? Any
14 objections? Make this easy, any objections?

15 MR. BERNIER: No, sir.

16 MR. BADDERS: No.

17 MR. REHWINKEL: That --

18 COMMISSIONER CLARK: Mr. Rehwinkel.

19 MR. REHWINKEL: Yes, and since I started this,
20 someone called it a kerfuffle, I would say that our
21 position would stay at no position, meaning that a
22 Type 2 stipulation would be available there.

23 And just for the record, I also wanted to do
24 this on all of the dockets, is the phrase "subject
25 to true-up" means that the WACC, or weighted

1 average cost of capital and all of the components
2 of that are subject to true-up in the next
3 proceeding, and that's fine with us.

4 COMMISSIONER CLARK: Okay.

5 MR. MOYLE: And this is a complicated issue,
6 and I think we are more comfortable letting the
7 process go forward and having a workshop, but
8 rather than there be any uncertainty as to whether
9 we have affirmatively said yes, we agree with that,
10 we just take a Type 2 stipulation.

11 COMMISSIONER CLARK: Okay. Taking a Type 2,
12 got it.

13 Anybody else?

14 MS. WYNN: We would also be taking no
15 position.

16 COMMISSIONER CLARK: No position?

17 MS. WYNN: Yes.

18 COMMISSIONER CLARK: Okay. All right. Are we
19 all clear? Everybody good?

20 Ms. DuVal, you are content?

21 MS. DUVAL: Yes, sir. I would also just like
22 to note that it's my understanding then, since we
23 have the stipulation language, that the additional
24 issue that Mr. Rehwinkel brought up earlier can now
25 just be resolved through the workshop and in next

1 year's clause dockets.

2 COMMISSIONER CLARK: Right. Correct, Mr.
3 Rehwinkel?

4 MR. REHWINKEL: Yes, Commissioner.

5 COMMISSIONER CLARK: Okay.

6 MR. REHWINKEL: We would reserve our right to
7 raise it in the next year's clause if we don't get
8 satisfaction along the way, but it is not an issue
9 we will raise in this docket, 07 or 01.

10 COMMISSIONER CLARK: Okay.

11 MR. REHWINKEL: Thank you.

12 COMMISSIONER CLARK: All right. So that
13 clears up our pending motion, am I correct?

14 MS. DUVAL: I believe so.

15 COMMISSIONER CLARK: Very good. All right,
16 let's move to Item 12, pending confidentiality
17 motions.

18 MS. DUVAL: Yes, sir. We have a few still
19 pending, and we are working on getting those over
20 to you as soon as possible.

21 COMMISSIONER CLARK: Okay. Post-hearing
22 procedures.

23 MS. DUVAL: Although staff believes that the
24 issues in this docket may be able to be stipulated,
25 we wanted to note just a few post-hearing

1 procedures.

2 If issues are stipulated and parties agree to
3 waive briefs, the Commission may make a bench
4 decision for those portions of the docket. If
5 there are any issues to be briefed, staff
6 recommends post-hearing briefs no longer than 40
7 pages and be due November 15th, 2019.

8 COMMISSIONER CLARK: All parties in agreement?

9 All right. Opening statements limited to five
10 minutes. Witness summaries limited to three
11 minutes. Briefs 40 pages.

12 Are there any other matters that we need to
13 attend to?

14 MS. DUVAL: Staff is not aware of any.

15 COMMISSIONER CLARK: All right. This will
16 conclude the 02 docket and we will move to the 07
17 docket.

18 (Proceedings concluded at 10:18 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 30th day of October, 2019.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020